IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-875

DONALD RATLIFF, SHELBY T. ABNEY, JAMES GAY, EDGAR REED, PAUL EBORG, LARRY KACHENMIESTER, JOANNA C. AMBURGEY, DONALD BOWEN and CHARLES HISLE, individually and as members and representatives of a class consisting of all civilian employees of the LEXINGTON-BLUE GRASS ARMY DEPOT at Avon, Kentucky .. PETITIONERS

VS:

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT..... RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

CHARLES T. WALTERS
71 South Main Street
Winchester, Kentucky 40391

Counsel for Petitioners

PRINT MASTER INC., 845 Lane Allen Rd., P.O. Box 4183, Lexington, Ky. 40504, Ph. 277-5134

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

The petitioners, Donald Ratliff, Shelby T. Abney, James Gay, Edgar Reed, Paul Eborg, Larry Kachenmiester, Joanna C. Amburgey, Donald Bowen and Charles Hisle, individually and as members and representatives of a class consisting of all civilian employees of the Lexington-Blue Grass

Army Depot, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Kentucky entered in this proceeding on October 1, 1976.

OPINION BELOW

The opinion of the Supreme Court of Kentucky appears in the appendix hereto.

JURISDICTION

The judgment of the Supreme Court of Kentucky was entered on June 25, 1976. A timely petition for rehearing was denied on October 1, 1976, and this petition writ of for certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

WHETHER THE LICENSE FEE ADOPTED BY RESPONDENT VIOLATES PETITIONERS' PROTECTION AGAINST THE TAKING OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW UNDER THE 14th AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment 14: Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

In May, 1972 the City of Lexington, Kentucky enacted a license fee (otherwise known as an occupational tax) that provided for a 2% annual tax on wages and salaries earned within the City boundaries. On January 1, 1974, the City of Lexington merged with its County, Fayette, into one governmental unit becoming known as the Lexington-Fayette Urban County Government. This was accomplished by popular vote of the City and County residents. These voters also approved a charter, Section 15.09 of which provided that all ordinances of the former City Government automatically became ordinances of the new urban government, thereby extending the license fee throughout the entire county.

All petitioners and their class are employed at a United States military installation located in the

northeast quadrant of Fayette County, bordering Bourbon and Clark Counties. About 50 acres of the entire 780 acre complex lies in Bourbon County. There are approximately 3600 civilian employees at the depot, of which 2052 reside out Fayette County.

The depot is owned by the United States Government and is entirely self contained. No benefits or service of any kind or nature are provided by the respondent. The petitioners who live at points east of the depot use only about one-fourth mile or less of roads in Fayette County in going to and from work. Once inside employees receive no service of any kind from respondent.

Petitioners filed a class action suit in the Fayette Circuit Court, Lexington, Kentucky, to have the license fee declared invalid as to them. Petitioners claimed, among other things, that the burden imposed by the license fee so greatly outweighed any benefit received by appellants, that it took their property without due process of law in violation of the 14th amendment to the United States Constitution. The lower Court concluded it did not and rendered judgment against petitioners, whereupon an appeal was taken to the Kentucky Supreme Court. The due process argument was again raised. The Kentucky Supreme Court held, in substance, that the mere fact of working in a federal area surrounded by an area under the control of a local government was a sufficient benefit to justify the tax.

REASON FOR GRANTING THE WRIT

I. THE TAX IMPOSED ON PETITIONERS TAKES THEIR PROPERTY WITHOUT DUE PROCESS OF LAW AS PROHIBITED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

It is the contention of petitioners that there is such disparity between the benefits provided to them by the respondent and the burden imposed by the license fee as to render the tax a violation of their right to due process of law under the United States Constitution. The tax takes their property devoid of this guarantee.

In the case of *Dane* v. *Jackson*, 256 U.S. 589, the Court had before it the issue of whether a state income tax on intangible property could be collected from the state generally and its proceeds returned to local municipitalities in unequal amounts as compared to the amounts local citizens had paid to the state for the tax. The due process argument was at issue. Although the tax was upheld, the Court enunciated basic principals which are relevant here. We quote from the opinion, page 569, as follows:

> ". . . a state tax law will be held to conflict with the Fourteenth Amendment only where it proposes, or clearly results in, such flagant and palpable inequality between the burden imposed and the benefit received, as to amount

> to the arbitrary taking of property without compensation — 'to spoilation under the guise of exerting the power of taxing.' "

The Court held that there must be "extreme inequality".

In the 1940 case, styled *Wisconsin* v. *J. C. Penney Co.*, 311 U.S. 435, the United States Supreme Court again affirmed this principal: (page 444)

> "That test is whether property taken without due process of law, or whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. The simple but controlling question is whether the state has given anything for which it can ask return."

The Court again applied this rule in 1954 in *Miller Brothers Co.* v. *Maryland*, 347 U.S. 340. It held that due process requires some definite link, some minimum connection, between a taxing authority and the person, property or transaction it seeks to tax.

There was never any type of evidentiary hearing in the Fayette Circuit Court (where the suit originated) to determine what, if any, benefits the respondent bestows on petitioners that would justify the tax. Moreover, the Kentucky Supreme Court, in its opinion, treated the mere fact of working within the federal area as sufficient benefit to warrant the

tax. Additionally, it implies that the Congressional Act, commonly referred to as the "Buck Act" implies that such a fact is adequate to satisfy due process. This is an erroneous conclusion on its face since congress has no authority to enact states contrary to the constitution.

If the Kentucky Supreme Court is correct in its reasoning, the principals laid down by *Dane* v. *Jackson, Wisconsin* v. *J. C. Penney Co., and Miller Brothers Co.* v. *Maryland,* all supra, are nothing more than shibboleths. While at work in the Army Depot petitioners receive absolutely no benefits of any description from respondent. It is an entirely self contained federal area. It has its own police, ambulance and medical service, utilities, garbage disposal, restaurants, etc. In fact, the Lexington-Fayette Urban County Government has no jurisdiction in the conclave.

Petitioners class consists of about 3600 employees. Approximately 2052 of the number are non-residents of Fayette County. The petitioners who live east of Fayette County use only about one-fourth mile of roads in the County, going to and from work. In the lower Court we asked, alternatively, that the tax be voided as to these persons. Applying the "burden versus benefit" test, we have a 2% tax levied on an employee's gross earned salary. At the same time, the employee receives no service from respondent while at work. The employees living east

of Fayette County travel on that county's roads only about one-half mile per day. It is obvious that there is the extreme inequality mentioned in *Dane* v. *Jackson*, supra.

We contend that this case ought to be put back to the Fayette Circuit Court for a determination of whether there exists sufficient benefits given to any of petitioners to satisfy due process under the fourteenth amendment.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Kentucky Supreme Court.

Respectfully submitted,

CHARLES T. WALTERS
71 South Main Street
Winchester, Kentucky 40391

Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of December, 1976, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to _____

_____

Counsel for respondent. I further certify that all parties required to be served have been served.

_____

CHARLES T. WALTERS
71 South Main Street
Winchester, Kentucky 40391

Attorney for Petitioners

APPENDIX

RENDERED: June 25, 1976

SUPREME COURT OF KENTUCKY
75-529

DONALD RATLIFF, ET AL.,
INDIVIDUALLY, ETC. APPELLANTS

VS.

APPEAL FROM FAYETTE CIRCUIT COURT
THIRD DIVISION
HONORABLE ARMAND ANGELUCCI, JUDGE
CIVIL ACTION NO. 74-2220

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT APPELLEE

PER CURIAM
AFFIRMING

Appellants, employees of the United States military installation at Avon, sought to have a license fee ordinance of the Lexington-Fayette Urban County Government declared invalid. The trial court dismissed the complaint because it failed to state a claim upon which relief could be granted.

Appellants admit that an ordinance imposing a license fee is a proper exercise of the constitutional and statutory powers of appellee, and that such a tax

may be applied to federal employees.[1] They contend, however, that the ordinance involved in the present case was not legally adopted, and that the ordinance violates appellants' constitutional rights by taking property without due process of law. The opinion will be concerned only with these two arguments.

Section 15.09 of the charter under which the Lexington-Fayette Urban County Government was formed provided:

> "All ordinances and resolutions of the City of Lexington * * * which are not inconsistent with the terms and provisions of this Charter shall be effective as ordinances and resolutions of the Lexington-Fayette Urban County Government until they have been repealed, modified or amended."

Validity of the proceedings in the forming of the Lexington-Fayette Urban County Government and KRS Chapter 67A, authorizing merger of city and county governments, was upheld in Holsclaw v. Stephens, Ky., 507 S.W. 2d 462 (1974). See also Pinchback v. Stephens, Ky., 484 S.W. 2d 327 (1972). No case involving the exact issue at hand has been cited by either party, but analogies may be drawn from annexation cases. In Commissioners of Sinking

1. Such was the holding in the recent case, Patrick, et al. v. City of Frankfort, Ky., _____ S.W. 2d _____ (decided May 28, 1976).

Fund v. Howard, Ky., 248 S.W. 2d 340 (1952), it was held that the city had power to annex a federal area so that persons working in the area would come within the terms of the license-tax ordinance. There, as in the present case, employees not originally within the taxing district became subject to the tax upon annexation without a new ordinance being enacted. In 2 McQuillin, Municipal Corporations, section 8.23, pages 599 and 600 (3rd, Ed. 1966), it is said:

> "It may be provided that upon consolidation the ordinances of both municipalities shall become effective throughout their combined territories, until amended or repealed by the governing body of the consolidated municipality, with the ordinances of the larger of the two former municipalities taking precedence over ordinances of the smaller, in case of conflict."

See also City of Pittsburgh v. Pennsylvania Railroad, 394 Pa. 58, 145 A. 2d 700 (1958).

One factor in favor of upholding the ordinance, that should not be ignored, is that a majority of the voters of Fayette County approved the merger charter, which contained the provision that existing ordinances of the City of Lexington would become effective as ordinances of the urban county government.

Appellants contend that enforcement of the license fee amounts to the taking of property without due process of law. With the enactment of 4 U.S.C.A., section 106, which is part of what is popularly known as the Buck Act, Congress authorized a local taxing district to levy an income tax[2] upon the income of persons working within a federal area. In Howard v. Commissioners of Sinking Fund, 344 U.S. 624 (1953), the court recognized that the Buck Act gave a municipality the right to levy an income tax on federal employees working on federally owned land on which a naval ordinance plant was located.

We believe there are benefits, substantial and realistic, conferred by the urban county government on the employees at Avon. The installation is surrounded by the taxing district. The employees in going to and from work receive police protection and use roadways built or maintained by the urban county government. The urban county government furnishes the employees, along with other persons, with public facilities. Beautiful landscapes and other esthetic benefits are provided. It might well be inferred that Congress, by passage of the Buck Act, acknowledged that inherent in the privilege of working within a federal enclave, surrounded by an

2. 4 U.S.C.A., section 110, defines "income tax" as a tax levied with respect to net income, gross income, or gross receipts.

area under the control of a local government, was a benefit sufficient to support a local income tax. See Kiker v. City of Philadelphia, 346 Pa. 624, 31 A. 2d 289 (1943), certiorari denied 320 U.S. 741. Also the fact that there are greater benefits bestowed on some employees in the taxing district than on others is not important. Cf. City of Louisville v. Sebree, 308 Ky. 420, 214 S.W. 2d 248 (1948); Carmichael v. Southern Coal & Coke Co., 301 U.S. 495 (1937).

The judgment is affirmed.

All concur except Reed, C.J., who concurs in result only.

COUNSEL FOR APPELLANTS:

Charles T. Walters
71 South Main Street
Winchester, Kentucky 40391

COUNSEL FOR APPELLEE:

George F. Rabe, Commissioner of Law
Donald D. Waggener, Assistant Corporation Counsel
Municipal Building
136-140 Walnut Street
Lexington, Kentucky 40507

* * * * *

COMMONWEALTH OF KENTUCKY

Supreme Court of Kentucky

MANDATE

Donald Ratliff, Et Al

File No. 75-529
VS. Opinion Rendered October 1, 1976

Appeal From Fayette
Circuit Court Action No. 74-2220

~~Lexington-Fayette Urban County Government~~

The Court being sufficiently advised, delivered herein an opinion per curiam, and it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed; which is ordered to be certified to said court.

It is further considered that the appellee recover of the appellant its cost herein expended.

Appellant's Petition for Rehearing Denied.

A Copy - Attest:

Issued October 1, 1976

Martha Layne Collins

MARTHA LAYNE COLLINS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

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DONALD RATLIFF, ET AL ..... PETITIONERS

VS:

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COUNTY GOVERNMENT ..... RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF KENTUCKY

BRIEF FOR RESPONDENT IN OPPOSITION

JAMES T. HODGE
Commissioner of Law

DAVID W. McLELLAN, JR.
Corporation Counsel
Municipal Building
136 Walnut Street
Lexington, Kentucky 40507

Counsel for Respondent

PRINT MASTER INC., 845 Lane Allen Rd., P.O. Box 4183, Lexington, Ky. 40504, Ph. 277-5134

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion below from the Supreme Court of Kentucky is styled *Donald Ratliff, et al* v. *Lexington-Fayette Urban County Government*, and is reported at 540 S.W.2d 8 (Ky. 1976).

JURISDICTION

Petitioner properly invokes the jurisdiction of this Court under 28 U.S.C. §1257(3) to review the final judgment of the Supreme Court of Kentucky which was

entered on June 25, 1976; petition for rehearing having been denied on October 1, 1976.

CONSTITUTIONAL PROVISION INVOLVED

This case involves the Fourteenth Amendment to the Constitution insofar as it states:

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law;"

STATUTE INVOLVED

It involves 4 U.S.C. §§105-110, known as the Buck Act, insofar as it states:

"§106. Same; income tax

"(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area."

ORDINANCE INVOLVED

It involves Lexington-Fayette Urban County Government, Code Section 13-4 (1972), the text of which is set forth in Appendix 1 hereto.

QUESTION PRESENTED

WHETHER ON THE BASIS OF THE RECORD AND ARGUMENTS PRESENTED BELOW, THE DECISION OF THE SUPREME COURT OF KENTUCKY THAT THE LICENSE FEE ADOPTED BY RESPONDENT DOES NOT CONSTITUTE A TAKING OF PETITIONERS' PROPERTY WITHOUT DUE PROCESS OF LAW IS SO CLEARLY IN ACCORD WITH THE DECISIONS OF THIS COURT AS NOT TO WARRANT REVIEW ON CERTIORARI.

STATEMENT

Respondent agrees with the facts recited in the first paragraph of Petitioners' statement, but restates the remaining material facts as follows.

This class action was brought by Petitioners, employees of the Bluegrass Army Depot, a United States military installation located at Avon in Fayette County, Kentucky, seeking to have the occupational license fee ordinance of the Lexington-Fayette Urban County Government declared invalid as to them. Petitioners alleged it deprives them of their property without due process of law. The case was briefed and argued in the Fayette Circuit Court, Lexington, Kentucky, on the motion of the Respondent to dismiss. The Circuit Court dismissed the Complaint because it failed to state a claim upon which relief could be granted, whereupon an appeal was taken to the Kentucky Supreme Court. That Court affirmed the decision of the trial court.

All Petitioners and their class are employees of the Bluegrass Army Depot, a United States military

installation located at Avon, in Fayette County, Kentucky. The depot is owned by the U.S. Government and is self-contained. Respondent presently renders no service within the confines of the establishment. Approximately 3600 persons are civilian employees at the depot. Of that number, Petitioner alleged that 57% or, 2052 persons, reside outside Fayette County. As admitted by Petitioners, all of them use Fayette County roads in going to and from work. (Petition p. 4).

ARGUMENT

THE DECISION OF THE SUPREME COURT OF KENTUCKY THAT THE LICENSE FEE ADOPTED BY RESPONDENT DOES NOT CONSTITUTE A TAKING OF PETITIONERS' PROPERTY WITHOUT DUE PROCESS OF LAW IS SO CLEARLY IN ACCORD WITH THE DECISIONS OF THIS COURT AS NOT TO WARRANT REVIEW ON CERTIORARI.

Petitioners raised for the first time in their Petition for Rehearing in the Supreme Court of Kentucky the existence of the issue that a small portion, approximately 6%, of the military installation lies outside of the boundaries of Fayette County. Under Kentucky procedure it is too late to raise a question for the first time on a Petition for Rehearing in the Supreme Court of Kentucky. Kentucky Rules of Appellate Procedure 1.350; *Howard* v. *Commonwealth*, Ky., 395 S.W.2d 355, 359 (1965). Thus, this issue did not actually arise before, nor was it actually passed upon or decided by, the Kentucky Court. It is well

settled that the question must be actually raised and decided in a State Court in order for this Court to review it on certiorari. *Edelman* v. *California*, 344 U.S. 357 (1953); *Beck* v. *Washington*, 369 U.S. 541 (1962). Accordingly, the issue is not properly before this Court.

However, if it were, it would be of no consequence. As can plainly be seen from the face of the local ordinance, (A.1) the license fee imposed by the Respondent applies only to income earned for work done within the boundaries of the Respondent and when an individual does not earn all of his income within said boundaries there is provision for apportionment.

On the above facts the decision of the Supreme Court of Kentucky was clearly correct, and in accord with the applicable decisions of this Court. This Court has previously ruled that a municipality may levy an occupational license tax on employees of a federal installation located on federally owned property in the municipality. *Howard* v. *Commissioners of Sinking Fund*, 344 U.S. 624 (1953). The opinion below is fully in accord with all previous decisions rendered on this issue. *Kiker* v. *City of Philadelphia*, 346 Pa. 624, 31 A. 2d 289 (1943), *cert. denied*, 320 U.S. 741 (1943); *Sheridanville, Inc.* v. *Borough of Wrightstown*, 125 F. Supp. 743 (D.N.J. 1954), aff'd 225 F.2d 473 (3d Cir. 1955), *cert. denied*, 351 US 962 (1956); *Application of Thompson*, 157 F.Supp. 93 (E.D. Pa. 1957), aff'd, 258 F.2d 320 (3d Cir. 1958), *cert. denied*, 358 U.S. 931

(1959); and *Non-Resident Taxpayers Association* v. *Municipality of Philadelphia,* 341 F.Supp. 1139 (D.N.J. 1971), aff'd, 458 F.2d 456 (3d Cir. 1973).

Congress, by passage of the Buck Act, 4 U.S.C. §106(a), receded to local taxing districts the power to levy a tax upon those deriving income from working on a federal area within the boundaries of the district. *Howard* v. *Commissioners of Sinking Fund, supra.* Inherent in the recession of that power was the transfer of the obligation to the local district to confer all the usual attributes of government upon those deriving income from working on the federal area. *Kiker* v. *City of Philadelphia, supra,* (hereinafter cited as *Kiker*). The fact that the federal government does not at the time in question see fit to take advantage of the obligations of the local authority to make available protection and benefits to persons and property on the federal installation does not justify invalidation of such income tax. *Kiker,* and *Sheridanville, Inc.* v. *Borough of Wrightstown, supra.* Accordingly, when the federal government does not see fit to take advantage of the local authority's obligation to make available protection and benefits, then the privilege of working and earning a living within the boundaries of the local authority is a sufficient benefit in and of itself to warrant the imposition of an occupational license fee.

However, the decision of the Kentucky Supreme Court was not predicated solely upon the rule that the privilege of being employed in the taxing district is a

sufficient benefit to meet the requirements of the Fourteenth Amendment. In addition, as admitted by the Petitioners, the Court noted that the Petitioners in going to and from work received police protection and used roadways built or maintained by the Urban County Government, and the Government furnishes them with public facilities.

This Court has in fact denied certiorari to other parties in substantially identical circumstances as those of the Petitioners herein. In *Kiker* where, as in this case, the plaintiff contended that he received no benefits or protection from the local taxing district and, therefore, that to enforce the provisions of the ordinance under consideration therein upon him was to deprive him of his property without due process of law, the Court held that a civilian employee at the Philadelphia Naval Shipyard and a resident of New Jersey who used a ferry to cross the Delaware River directly to the shipyard and had no contacts with other parts of Philadelphia was not exempt from a net income tax imposed by the City of Philadelphia, and that the imposition of the tax upon him did not deprive him of his property without due process of law.

No decisions have been rendered that are in conflict with the opinion of the Kentucky Court rendered herein. The cases relied upon by Petitioners are distinguishable on their facts. See *Non-Resident Taxpayers Association, supra,* where the Court of Appeals stated:

> "Appellants' due process attack on the ordinance under cases such as . . . *Miller Brothers Co.* v. *Maryland,* 347 U.S. 340, 774 S.Ct. 535, 98 L.Ed. 744 (1954), . . . if we had to consider it, we would regard it as insubstantial."

It is true that in *Miller Brothers Co.* v. *State of Maryland,* 347 U.S. 340 (1954) this Court stated:

> "That due process requires some definite link, some minimum connection, between a State or person or property or transaction it seeks to tax."

However, in that case the State of Maryland was attempting to tax a Delaware corporation which, without any invasion or exploitation of the consumer market in Maryland, sold goods to Maryland inhabitants who traveled from Maryland to Delaware to purchase them. As this Court noted at page 345 of its Opinion, that is far different from saying that Maryland could not have taxed the Delaware corporation if it had done business in Maryland. Likewise, although this Court in *State of Wisconsin* v. *J.C. Penney Co.,* 311 U.S. 435 (1940) stated the test recited by the Petitioners, it held that the substantial privilege of carrying on a business in Wisconson clearly supported the imposition of a tax for the privilege of declaring or receiving dividends out of income derived from property and business located in the state. The facts of *Dane* v. *Jackson,* 256 U.S. 589 (1921) bear no resemblance whatsoever to the facts of the case presently before this Court.

As noted in *Dane* v. *Jackson, supra,* no system of taxation has yet been devised which will return to each taxpayer or class of taxpayers benefits in proportion to the payments made. Many governmental benefits inure more directly to individuals who have occasion to use them. The most notable in this context are the Courts, essential to the rights and liberties of all citizens but directly utilized only by some. The point is, regardless of the extent of the actual use of governmental benefits, the obligation of the Urban County to furnish them is no less at Bluegrass Army Depot than in other areas. A requirement of direct return of benefits, as a basis for taxation would simply mean that government as we know it in this country would cease to exist.

Since the direct equation of taxes with benefits is contrary to reason and authority, it must be rejected; accordingly there was no need for any evidentiary hearing in the Fayette Circuit Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari shculd be denied.

Respectfully submitted,

JAMES T. HODGE
Commissioner of Law

DAVID W. McCLELLAN, JR.
Corporation Counsel
Municipal Building
136 Walnut Street
Lexington, Kentucky 40507

Counsel for Respondent

PROOF OF SERVICE

I, David W. McLellan, Jr., one of counsel for Respondent herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 25TH day of January, 1977, I served three (3) copies of the foregoing Brief on Charles T. Walters, counsel for Petitioner, 71 South Main Street, Winchester, Kentucky 40391, by mailing same to him postage pre-paid at the above address.

David W. McLellan, Jr.

APPENDIX

APPENDIX 1

Lexington-Fayette Urban County Government, Code

Sec. 13-4. Who must obtain; basis of computation.

Every person engaged in any occupation, trade, profession or other activity in the city shall pay to the city for the purpose of the general fund an annual license fee for the privilege of engaging in such activities, which license fee shall be measured by two per centum (2%) of:

(a) All salaries, wages, commissions and other compensations earned by every person in the city for work done or services performed or rendered in the city; and

(b) The net profits of all businesses, professions, or occupations from activities conducted in the city.

Where salaries, wages, commissions and other compensations under (a) above are earned for work done or services performed or rendered in the city, such license fee shall be computed by obtaining the percentage which the compensation for work performed or services rendered within the city bears to the total compensation earned.

The net profits of business and professions from activities conducted in the city under (b) above shall be computed as follows:

Multiply the entire net profit from all sources by a business allocation percentage to be determined by:

(1) Ascertaining the percentage which the gross receipts of the license from sale or service rendered within the city bears to the total gross receipt from sales or service rendered wherever made.

(2) Ascertaining the percentage which wages, salaries and other personal service compensation for the period covered by the report for services performed or rendered within the city bears to the total wages, salaries and personal service compensation for such period of all the licensee's employees within and without the city.

(3) Adding together the percentages determined in accordance with subparagraphs (1) and (2) above, and dividing the total so obtained by two. (Ord. No. 3583, §1, 12-27-56; Ord. No. 99-72, §1, 5-25-72)

* * * * * * *